

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RECEIVED  
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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

JOSHUA R. COWELL,  
Petitioner,

v.

DAVID GRAY, Warden, BeCI,  
Respondent.

CASE NO: 2:22 CV 4002

JUDGE: JUDGE SARGUS

MAGISTRATE: MAGISTRATE JUDGE GENTRY

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PETITION FOR HABEAS CORPUS RELIEF  
UNDER 28 U.S.C. § 2254

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PETITIONER

JOSHUA R. COWELL  
Petitioner - Pro Se  
Inmate No.: 603016  
Belmont Correctional Institution  
68518 Bannock Road  
St. Clairsville, Ohio 43950

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RESPONDENT

DAVID GRAY, Warden, BeCI  
Respondent -  
Belmont Correctional Institution  
68518 Bannock Road  
St. Clairsville, Ohio 43950

Counsel for Respondent  
Ohio Attorney General  
Dave Yost  
150 East Gay Street  
Columbus, Ohio 43215

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

<b>United States District Court</b>		District: <b>Southern District of Ohio</b>
Name (under which you were convicted): <b>JOSHUA R. COWELL</b>		Docket or Case No.:
Place of Confinement : <b>BELMONT CORR. INST. - ST. CLAIRSVILLE, OHIO 43950</b>		Prisoner No.: <b>603016</b>
Petitioner (include the name under which you were convicted)  <b>JOSHUA R. COWELL</b>		Respondent (authorized person having custody of petitioner)  v. <b>DAVID GRAY, WARDEN, BECI</b>
The Attorney General of the State of <b>Ohio</b>		

**PETITION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
SUMMIT COUNTY COURT OF COMMON PLEAS  
205 S. HIGH STREET  
AKRON, OHIO 44308  
(b) Criminal docket or case number (if you know): **CR-2010-09-2645**
2. (a) Date of the judgment of conviction (if you know): **4/26/2011**  
(b) Date of sentencing: **6/7/2011**
3. Length of sentence: **25 YEARS**
4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
5. Identify all crimes of which you were convicted and sentenced in this case:  
**AGG. BURGLARY, FELONIOUS ASSAULT, RAPE, KIDNAPPING**
6. (a) What was your plea? (Check one)

<input type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input checked="" type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

Plead Guilty to AGG. BURGLARY, FELONIOUS ASSAULT, RAPE, KIDNAPPING.

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☒ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

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(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Summit County Court of Common Pleas

(2) Docket or case number (if you know): CR-2010-09-2645

(3) Date of filing (if you know): 12/14/2015

(4) Nature of the proceeding: MOTION TO VACATE THE ILLEGAL AND VOID SENTENCE

(5) Grounds raised: SENTENCE WAS CONTRARY TO LAW

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result:

(8) Date of result (if you know):

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(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: Summit County Court of Common Pleas
- (2) Docket or case number (if you know): CR-2010-09-2645
- (3) Date of filing (if you know): 06/10/2016
- (4) Nature of the proceeding: MOTION TO VACATE ILLEGAL SENTENCES
- (5) Grounds raised: SENTENCE WAS CONTRARY TO LAW

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: denied

(8) Date of result (if you know): 8/15/2016

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: Summit County Court of Common Pleas
- (2) Docket or case number (if you know): CR-2010-09-2645
- (3) Date of filing (if you know): 04/14/2021
- (4) Nature of the proceeding: MOTION TO WITHDRAW GUILTY PLEA
- (5) Grounds raised: (See page 3 of Memorandum in Support)

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: **Denied.**

(8) Date of result (if you know): **6/22/2021**

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No

(2) Second petition: ☐ Yes ☒ No

(3) Third petition: ☒ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE: THE COURTS FAILED TO RECOGNIZE THE PETITIONER COULD NOT HAVE POSSIBLY KNOWN THE CONCEALED SIDE EFFECTS OF THE DRUG ABILIFY AT THE TIME OF THE CRIME IN VIOLATION OF THE 5th AND 14th AMENDMENTS AND DUE PROCESS**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The now known side effects of Abilify caused the Petitioner to experience uncontrollable compulsive impulses and engaged in harmful behaviors. These side effects were concealed by the manufacturer until 2016 when it updated its product warnings in the United States, six years after the case originated. The Courts in Ohio failed to recognize the newly discovered facts as a mitigating factor or cause of Petitioner's criminal conduct. This violated his 5th and 14th Amendment rights and Due Process rights.

(b) If you did not exhaust your state remedies on Ground One, explain why:

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

The issue was unknown to Petitioner until 6 years + after date of conviction.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: MOTION TO WITHDRAW GUILTY PLEA

Name and location of the court where the motion or petition was filed:

Summit County Court of Common Pleas

Docket or case number (if you know): CR-2010-09-2645

Date of the court's decision: May 25, 2022

Result (attach a copy of the court's opinion or order, if available):

Judgment affirmed.

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Ohio Supreme Court

Docket or case number (if you know): 2022-0831

Date of the court's decision: August 16, 2022

Result (attach a copy of the court's opinion or order, if available):

Jurisdiction was denied.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

**GROUND TWO:** THE COURTS FAILED BY NOT PROPERLY APPLYING OHIO REVISED CODES § 2901.21 (A) AND § 2901.22(B) PROPERLY IN THIS CASE IN VIOLATION OF PETITIONER'S 5th AND 14th AMENDMENTS AND DUE PROCESS RIGHTS

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Courts erred by not applying Ohio Revised Code § 2901.21(A) and § 2901.22(B) properly in this case. Both of these statutes pertain to the liability factors and whether Petitioner was actually culpable for his criminal behavior while in a black-out state and under the control of a prescribed medication. Petitioner was required to take Abilify as part of his treatment and in order to be released from the hospital. The medication resulted in serious side effects which caused harm to the Petitioner and others. However, Petitioner's actions were not voluntary and Petitioner cannot be held culpable. This violated Petitioner's 5th and 14th Amendments and Due Process.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

The issue was unknown to Petitioner until 6 + years after the date of conviction.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

MOTION TO WITHDRAW GUILTY PLEA

Name and location of the court where the motion or petition was filed:

Summit County Court of Common Pleas

Docket or case number (if you know): CR-2010-09-2645

Date of the court's decision: May 25, 2022



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Result (attach a copy of the court's opinion or order, if available):

**Judgement affirmed.**

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

**OHIO SUPREME COURT**

Docket or case number (if you know): **2022-0831**

Date of the court's decision: **August 16, 2022**

Result (attach a copy of the court's opinion or order, if available):

**Jurisdiction was denied.**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two

**GROUND THREE:** THE COURTS FAILED TO RECOGNIZE THE PETITIONER WAS NOT RESPONSIBLE FOR HIS CRIMINAL CONDUCT AS A RESULT OF MENTAL DISEASE OR DEFECT AND DID NOT HAVE THE CAPACITY TO KNOW THE WRONGFULNESS OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WHICH VIOLATED PETITIONER'S 5th AND 14th AMENDMENTS AND DUE PROCESS RIGHT.

(a) **Supporting Facts:** As a result of the injuries of memory loss, blackouts, uncontrollable and compulsive behaviors, the Petitioner was not responsible for his criminal conduct as a result of mental disease or defect and did not have the capacity to know the wrongfulness of his conduct or to conform his conduct to the requirements of law.

The Courts failed to recognize this fact which resulted in violations to his 5th and 14th Amendments and Due Process rights.

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(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: MOTION TO WITHDRAW GUILTY PLEA

Name and location of the court where the motion or petition was filed:

Summit County Court of Common Pleas

Docket or case number (if you know): CR-2010-09-2645

Date of the court's decision: May 25, 2022

Result (attach a copy of the court's opinion or order, if available):

Judgment affirmed.

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Ohio Supreme Court

Docket or case number (if you know): 2022-0831

Date of the court's decision: August 16, 2022

Result (attach a copy of the court's opinion or order, if available):

Jurisdiction was denied.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

**GROUND FOUR: THE COURTS FAILED TO RECOGNIZE PETITIONER'S PLEA OF GUILTY WAS NOT MADE KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY DUE TO THE PETITIONER BEING UNAWARE OF THE CAUSE OF HIS CRIMINAL CONDUCT WHICH VIOLATED HIS 5th AND 14th AMENDMENTS AND DUE PROCESS RIGHTS**

(a) **Supporting Facts:** Petitioner's plea of Guilty was not made knowingly, intelligently, or voluntarily due to Petitioner being wholly unaware of the cause of his criminal conduct. The Petitioner pleaded to the charges six years before it became public that the side effects of Abilify played a significant role in his criminal conduct. Thusly, the Petitioner was not "knowing" the cause of his behavior and therefore could not have "intelligently" or "voluntarily" entered a plea of guilty. Petitioner was entitled to withdraw his plea in light of the new evidence and the Courts' denials violated his 5th and 14th Amendment and Due Process rights.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

- (c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

- (d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: MOTION TO WITHDRAW GUILTY PLEA

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Name and location of the court where the motion or petition was filed:

**Summit County Court of Common Pleas**

Docket or case number (if you know): **CR-2010-09-2645**

Date of the court's decision: **May 25, 2022**

Result (attach a copy of the court's opinion or order, if available):

**Judgment affirmed.**

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

**OHIO SUPREME COURT**

Docket or case number (if you know): **2022-0831**

Date of the court's decision: **August 16, 2022**

Result (attach a copy of the court's opinion or order, if available):

**Jurisdiction was denied.**

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

n/a

(f) In any post-conviction proceeding:

BRIAN SMITH / Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding:

Pro Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:


or any other relief to which petitioner may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on 11-3-22 (date).



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Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.